

**MINUTES  
for the  
NINTH MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 10-11, 2006  
UNM Continuing Education Center, Room G  
1634 University Blvd. NE  
Albuquerque**

The ninth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, at approximately 10:15 a.m. in the University of New Mexico (UNM) Continuing Education Center, Room G, at UNM in Albuquerque.

**Present**

Rep. Rick Miera, Co-Chair  
Sen. Cynthia Nava, Co-Chair  
Sen. Ben D. Altamirano  
Sen. Vernon D. Asbill  
Dr. Leslie Carpenter  
Cecilia J. Grimes  
Pancho Guardiola  
Leonard Haskie  
Robbie Heyman  
Anna Lamberson  
Rep. Larry A. Larrañaga  
Sen. Carroll H. Leavell  
Kilino Marquez  
Elizabeth Marrufo  
Don Moya for Veronica Garcia, Public  
Education Department (PED)  
Bud Mulcock  
Rep. Henry Kiki Saavedra  
Norman Suazo (October 11)  
Sen. Leonard Tsosie  
Dr. Moises Venegas  
Dr. Peter Winograd (October 10) and  
Katherine Bilton (October 11) for Katherine  
B. Miller, Department of Finance  
and Administration (DFA)  
Rep. W.C. "Dub" Williams

**Absent**

Gary Bland  
Sen. Joseph A. Fidel  
Speaker of the House Ben Lujan

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

David Abbey, Legislative Finance Committee (LFC) (October 10)

Paul Aguilar, LFC

Sharon Ball, Legislative Council Service (LCS)

Tim Berry, Public School Facilities Authority (PSFA)

Pauline Rindone, Legislative Education Study Committee (LESC)

Robert Gorrell, PSFA

Linda Kehoe, LFC

Roxanne Knight, LCS

Antonio Ortiz, PED

Paula Tackett, LCS

**Guests:**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Tuesday, October 10**

**Standards-Based System: Issues and Options Regarding Adequacy**

Robert F. Rosebrough, Esq., Jordan and Rosebrough, PC, legal counsel for Gallup-McKinley County Public Schools (GMCS); John Stamford, assistant superintendent of business services, GMCS; Ron Van Amberg, Esq., Van Amberg, Rogers, Abeita and Yepa, LLP, legal counsel for Zuni Public Schools; and Bruce Boynton, Esq., Boynton Law Office, legal counsel for Grants-Cibola County Schools, were scheduled and appeared before the task force except for Mr. Stamford, who was not present.

The presentation focused on the original *Zuni* lawsuit, which they summarized as a shift in school funding from primarily local to more of a shared state responsibility. Mr. Rosebrough offered a history on the issue of capital school funding. During his presentation, he noted the increase in state funding for capital project deficiencies. Since the lawsuit seven years ago, he stated that capital funding for schools has increased from a \$12.5 million average state award to an award from the legislature in excess of \$180 million. He said that New Mexico is still in the "middle stage" with regard to the *Zuni* lawsuit. He expressed concern about the state's large backlog of school facility funding needs and the increasing costs for construction. His major concern is the adequacy standards "ceiling" for the poorest districts. He proposed raising the adequacy standards and establishing a permanent revenue stream for school facility construction.

Mr. Van Amberg asked that everyone work together with a common goal. He focused concern on several items:

- the number of schools going before the Public School Capital Outlay Council (PSCOC) for funding requests;

- the ranking system;
- the methodology for rankings based on the adequacy standards;
- problems with standards being either too rigid or too flexible;
- local school boards needing more say in the standards process; and
- the need for a system in which the adequacy standards are important to all districts.

The presenters claimed that some schools have more access to bonding dollars, thus causing disparity, which needs to be addressed, particularly for areas like Gallup and Gadsden. There was discussion about finding a way to allow the districts with little or no bonding capacity to go "above" adequacy standards and be able to address rapid growth. They suggested that facility needs are falling behind in the sources and amounts of funding required, thus digging the state into a deeper hole.

Mr. Boynton explained to the task force that the adequacy standards need closer examination and clarification in terms of a school's overall program, and that the standards should be consistent and appropriate for the overall program goals of the schools. Local districts need to have input in order to address their individualized needs.

Representative Larranaga noted that the state needs at least \$2.5 billion to \$4 billion to meet the current minimum adequacy standards for school districts. He stated that local districts can add things at a cost for the locals, which would cover items above the adequacy standards. Mr. Boynton responded with concern that the legislature seems to have funded many capital outlay projects with a greater priority than the school capital outlay projects. He seemed to suggest that there might be a priority for certain kinds of school capital outlay that trumped other capital outlay funding. Mr. Rosebrough noted that adequacy is a constitutional issue as well as a uniformity issue. He commented that education requires uniformity and sufficiency in the constitution, but that other capital outlay does not.

The attorneys clarified that they want schools to be able to go beyond the adequacy standards without a penalty (offset) in order to provide for individualized and local school needs. They do not support "cookie cutter" schools. This topic generated conversation about the Arizona school system, which is not one the attorneys favor for capital spending on schools. They reiterated a desire to work collaboratively with the state of New Mexico to create a fund and find a revenue stream to let some schools deviate from the adequacy standards, particularly for auditoriums, theaters or performing arts centers and sports facilities.

It was noted by Mr. Moya from the PED that one of the purposes of the PSCOC is to adjust the adequacy standards; they are not stagnant. Mr. Boynton suggested that if the adequacy standards are increased, there will be program impacts, and he wondered how the state would be addressing security in schools.

Senator Altamirano offered his explanation about the overall capital outlay process and underscored the fact that there always is some criticism as to whether the funding should be for schools or something else.

Mr. Haskie noted that major litigation, such as in land and water cases, have run for years, so he seeks an early resolution to the school funding issues. He recommended that the parties lay out clear parameters for what they want, and he urged the schools to come out with a consummated agreement to take to the legislature.

In response to several of Mr. Mulcock's questions, the attorneys suggested that the task force look at the process and how aggressive it is. Mr. Mulcock stated that he thinks the 1,500 percent increase in funding for schools has been very aggressive. He wanted to know how much time is acceptable for bringing schools to adequacy and proposed that the state's solution "back into" the time frame.

Co-chair Miera commented that the PSCOOTF is looking at adequacy standards, but that technology always has been a big issue — over \$100 million of need. He clarified that issues with funding for natural disasters have a significant impact on funding for other projects. He expressed concern about charter schools and how they will be changing in the future. He mentioned that the "use" of schools needs to be reviewed, along with the partial year closure of schools, which takes place in most districts. Mr. Boynton said that a lot of the capital outlay funding went to charter schools.

Senator Leavell asked what the attorneys would have done versus what has been done by the state. Mr. Boynton's response reasserted the problem with the adequacy standards, questioning what is the best way to address them since some schools, like Zuni, are limited, whereas for other schools the adequacy standards are the bottom of what the schools can afford to build.

Mr. Guardiola said that even though he comes from an area that is 75 percent Native American, he feels the system is equitable. Others said they want the litigation to go away and that the attorneys have not presented solutions, other than to increase local bonding capacity or other funding streams. While Mr. Van Amberg said he did not bring any solutions to the meeting, he thinks that the finance and budget people should get together to develop ideas. Mr. Boynton cautioned that in Arizona, the court mandated a solution that New Mexico would not want imposed here.

Co-chair Nava expressed concern that the wealthier districts have an advantage and other secondary schools have issues with the adequacy standards. She supports the establishment of a subcommittee, and names were given to staff.

The task force recessed for lunch and reconvened at 1:50 p.m.

## **Potential Improvements in the Application of Adequacy Standards: A Discussion on Utilization and Community Needs**

Martica Santistevan, planning and design manager with the PSFA, and Andre Larroque, building standards specialist from PSFA, gave brief presentations. First, Ms. Santistevan gave a history of the adequacy standards, noting the 2001 first draft of the standards, and directed interested persons to the PSFA Planning Reference Guide on the PSFA's web site.

Mr. Larroque reviewed his handout, which contains a recap of the August 5, 2006 and the September 15, 2006 meetings of the Adequacy Standards Advisory Group. This group has been meeting to review all of the adequacy standards for the purpose of updating, revising and correcting them. School district representation has been good, and the group has made considerable progress on the proposed changes.

A few of the major concerns include that:

1. the scope of and purpose for the adequacy standards needs a better definition;
2. the standards should make reference to the PSFA Planning Reference Guide;
3. the PED may need to update and clarify programmatic guidance in areas that impact facilities;
4. several new definitions need to be added to the standards;
5. statutory changes relating to rural education and educational technology may require changes in the standards;
6. some flexibility may be included in the classification of schools and new categories may need to be added;
7. minimum requirements for site security must be analyzed in consideration of any applicable state and federal policies regarding schools;
8. some revisions to the food services section may be required due to state requirements regarding length of lunch periods and practical experience regarding space needs; and
9. additional language cleanup may be necessary.

## **Facilities Master Plans: Looking Ahead 10 Years**

Bill Sprick, master planner, and Pat McMurray, senior facilities manager, both from PSFA, gave presentations on the future of facility master planning. The two presenters reviewed the results of a state poll they conducted to determine if other states have five- or 10-year school facility planning requirements. The results of 30 states indicated that the states were equally divided among those with a five-year, 10-year or no requirement for long-term planning.

Mr. McMurray noted that master plans often are subject to change whenever there are changes in school district staff, managers or boards, which can lead to repeated change and failure to commit to a long-term strategy. Mr. Gorrell gave some examples of changes caused by the staff changes in the districts. Also, Dr. Carpenter, superintendent for the Santa Fe School District, noted that programmatic changes may impact facility needs. Mr. McMurray said some school districts are "piecing" facilities to appeal to the voters in bond elections versus putting all the proceeds into one or a few schools within the districts.

Mr. Sprick noted that the planning process is helpful in bringing the facility assessment database together with the master planning efforts. Master planning can incorporate factors such as growth and housing developments. Mr. Gorrell explained that the PSFA monitors plans to be sure the PSCOC is not funding unnecessary space (e.g., a proliferation of unnecessary space). Recent legislation was passed for the standards-based process to allow for assistance to school districts for facility master planning. Training has been offered by PSFA to school districts to help them. Ms. Tackett reminded the task force that under the old law it was the superintendent of public instruction who needed to review the space issues; now it is the PSFA performing that role.

Facility master planning is implemented using capital funds, while the maintenance plan identifies when facility equipment is nearing the end of its projected useful life, requiring replacement. The budget needs to be identified throughout the master plan for the equipment replacements. It is important that the master plan and budget needs are aligned for budgetary and funding purposes.

There was discussion among task force members regarding the value of long-term plans and their accuracy, and the need for 10-year plans for smaller, slow-growth school districts. Others think the longer-term plans are costly, given their value and accuracy. Many factors in construction costs can change quickly and seriously impact the value of the plans. Some concern was raised about trying to have "one size fits all" approaches to planning and construction. Also, there were cautions offered about allowing facility plans to dictate program plans. The concept of moving to 10-year plans was received by the task force with limited enthusiasm.

#### **Update on Developer Construction of School Facilities: Implications for the Standards-Based Process**

Gilbert Mesa, vice president, Verde Realty, El Paso, Texas, Jack Darnall, vice president, Verde Realty, Tanya L. Scott, Esq., Law and Resource Planning Associates, LLC, Albuquerque, and Peter Mallory, Esq., registered lobbyist, appeared before the task force to discuss their proposal to use private sector funds to build a school facility under a lease-purchase agreement with the state or the school district in Santa Teresa. Specifically, this proposal is meant to encourage private capital investment in the construction of schools and allow a school district to apply or qualify for and use public school capital outlay matching funds to purchase a school building that has been constructed and occupied by the school district but that is not already owned by the school district.

There was discussion about the impact this might have on the "local share" and whether a school's need would have to be confirmed through the regular process. It was recommended that a work group be established to study the proposed language and to report back to the PSCOOTF.

The task force recessed until the next day.

**Wednesday, October 11**

The meeting was reconvened at approximately 9:30 a.m.

### **Growth Issues, Adequacy Standards and the Standards-Based Process**

The Executive Committee of the West Side Coalition of the Neighborhood Associations appeared before the task force. Joe Valles, DDS, president, Dan Serrano, vice president, and Laura Horton, secretary, were present. Ms. Joan Jones, treasurer, was not present for the meeting.

The first speaker was Mr. Valles, who presented the contents of his handout (see meeting file). The west side coalition represents more than 30 neighborhood associations from three different city council districts in Albuquerque, and it has stood firmly in pursuit of adequate funding for the west side schools and schools in other high-growth areas throughout the state. He said the taxpayers in this high-growth area are desperate and frustrated and that they have passed school bonds to get two new high schools built, but they see the need for a third high school as soon as the two other schools are completed.

Mr. Serrano reported that 65 percent of the building permits in Albuquerque are for west side growth. He expressed concern that the upcoming bond election would only provide funding to get the school district to where it should have been five to six years ago. He expressed concern that the *Zuni* lawsuit has negatively impacted the high-growth areas, and he urged the task force to continue exploring alternative funding sources to address the unique needs of high-growth areas. Included in those alternatives are severance tax bonds and design-lease build options.

It was noted that Albuquerque's east side continues to suffer from infrastructure deficiencies while the west side struggles with high growth. The presenters urged the task force to include within the funding formula and strategies a distinction between growth within the school district versus growth patterns distinct to the west side. They urged the task force to explore redistricting to get representation more balanced for the west side, to consider that the Albuquerque metro area is the most taxed area in the state and that the Albuquerque Public School (APS) District is the twenty-fifth largest in the country, with a student population of 89,500 housed in 131 schools.

Ms. Horton said APS will be opening up 500,000 square feet of new schools, but she is concerned that there will not be sufficient funding to maintain these schools.

Mr. Serrano asked that a future study be done to look at true property assessments and other issues related to funding sources. When asked by the task force if the west side is working with the City of Albuquerque, Ms. Horton said they do what they can. She mentioned that the impact fees (e.g., in the Ventana Ranch area) are on par with the city's impact fees, and she is happy to have the builders stepping up to the plate to address the issues. Dr. Venegas noted that the coalition needs to have conversations with the city, the mayor, city council members and APS officials. The coalition representatives indicated they are having those conversations.

There was discussion about putting the students where there are schools, but Ms. Horton claimed that busing is expensive and impacts the quality of life for families. Since the Rio Grande is a natural boundary, busing kids across the river results in families moving back and forth to attend school functions, which can be disruptive. She noted that the northwest quadrant of APS did so, and it negatively impacted families regarding extracurricular activities.

There was testimony given about "facility fees" that are being collected in some areas (called clusters). These fees are paid "per house" that is constructed within the clusters. Alan Armijo testified that an oversight committee looks at the money along with other revenue such as bond revenue. He said the fee is a set rate, which is not based on the price of the house. The fees go into the general fund, which would indirectly impact bonding. Also, the fees would go to the cluster area in which the fees are generated; they would not be distributed district-wide.

Mr. Serrano testified that the fee is based on the building lot and is "passed-through" to the home buyer. Thus, the \$150 million projection of the fees will be "absorbed". This led to discussions about the Albuquerque metro area being the most heavily taxed in the state. Ms. Horton explained that there are eight other taxing entities in addition to the bonding, which is the basis for the statement in the handout. She explained that the voters retaliate and vote against the bonds because of the number of taxes.

There was discussion about Texas and Virginia, where the benefits of design/build alternatives, particularly for high-growth areas, have been recognized. For New Mexico, this can change depending upon whether the voters approve Constitutional Amendment Number 2 on November 7, 2006. Mr. Serrano commented that the voters see the state of New Mexico with a cash windfall, so they are less likely to approve increased taxes. Representative Miera asked if the west side is looking at impact fees. Mr. Serrano said the coalition supports impact fees, particularly for high-growth areas, but the fees only address the elementary schools and are not sufficient to cover junior and high school construction.

In response to more discussions about the *Zuni* lawsuit, Senator Tsosie asked what the coalition is proposing. Mr. Serrano requested that the legislature address these problems through the formula. Discussion ensued about the meaning of growth versus equity. Senator Tsosie recommended taking impact aid out of the funding formula. He suggested that Native American areas are actually more heavily taxed than the Albuquerque area. Mr. Serrano indicated that he speaks of "inequity" as "inadequacy".

There were questions about whether the *Zuni* lawsuit has resulted in less funding for the west side or Albuquerque area, but Ms. Tackett clarified that because of the established process, the lawsuit resulted in \$200 million going to APS, when in the past it did not receive funding. The West Mesa schools were ranked numbers one and two because of the growth factor. Senator Nava suggested that the lawsuit has not been working against the west side; rather, there just is not enough money to address all the facility needs.

## **Adequacy Standards: Issues and Recommendations**



The following individuals appeared before the task force:

- Dr. V. Sue Cleveland, Superintendent, Rio Rancho Public Schools;
- Walter G. Gibson, Superintendent, Los Lunas Public Schools;
- Toni Nolan-Trujillo, Superintendent, Pojoaque Valley Public Schools;
- Dr. Elizabeth Everitt, Superintendent, APS;
- Barbara Vigil-Lourder for Bernalillo Public Schools;
- Terry Coker for Dr. Sonia Diaz, Superintendent, Las Cruces Public Schools;
- Bobbie Gutierrez, designee for Dr. Leslie Carpenter, Superintendent, Santa Fe Public Schools; and
- Senator Nava spoke for the Gadsden Independent School District.

The above-named individuals expressed concern about the adequacy standards, PSFA construction oversight and other issues relating to the Public School Capital Outlay Act. The presentations were made from two handouts (see meeting file). They reviewed the contents of a letter, which had been sent from eight superintendents to Veronica Garcia, secretary of public education.

The presenters discussed several "unintended consequences" of the act:

- regulation has become more important than support;
- inflexible building standards have replaced local control;
- state-prescribed building priorities can override well-defined local needs;
- PSFA compliance has superseded assistance to school districts;
- the minimum standard for adequacy has become the "build to" standard;
- local projects and legislative appropriations often upset district master plan priorities; and
- there is a disconnect among the standards and the requirements of state educational and program initiatives.

Some concerns relating to PSFA construction oversight include:

- that the oversight has become overly regulatory and bureaucratic;
- that the prioritization of building projects based on current enrollment, rather than projected enrollment, unfairly penalizes growth districts through:
  - the need for portable facilities that are funded through operational budgets;
  - overcrowded schools and classrooms; and
  - the inability of these districts to implement their master plan in a timely manner;
- a lack of responsiveness to local needs and hidden costs; and
- a lack of support for viable construction options such as design-build.

It was noted that the adequacy standards as written do not:

- meet the program and curriculum needs of twenty-first century schools, particularly with regard to technology;
- consider variations in the size and locale of schools and districts;
- adapt to local program needs;
- have the flexibility to build for the future;

- provide for the technology needs of school and communities; or
- consider the many variations that exist across a complex, multicultural state.

Dr. Cleveland noted that projects need to be completed more quickly, that more portables are needed to address the rapid growth in some school districts and that new ways of looking at construction are needed. Dr. Gibson stressed the importance of community innovation and differing local needs/input. Some schools need a health care clinic (e.g., the east side of Los Lunas), whereas others do not. He asked that superintendents and district-level representatives be included in the capital outlay process. He was not proposing a complete overhaul of the process, but he suggested aligning the standards-based approach with local needs.

Regarding local needs, Superintendent Nolan-Trujillo stressed a need for trilingual programs (English, Spanish and Native American languages). Dr. Everitt noted her concern for performing arts programs and facilities to reflect both the needs of today and in the future. Ms. Vigil-Lourder requested a process for moving portables, saying the prepay costs are problematic. She noted that her district does not seek direct appropriations for public schools because it would negatively impact its public school capital outlay. She deals with seven governors from seven pueblos who have their own local needs. Ms. Gutierrez made note of the time delays and issues that Santa Fe has with portable classrooms. Mr. Coker testified that Las Cruces Public Schools support the design-build and the construction management-at-risk concepts. He reminded the audience that Las Cruces is surrounded by Bureau of Land Management and state land, limiting growth to certain areas.

There was some discussion about the costs of purchasing portable classrooms versus construction of new schools. Ms. Tackett noted that the law does allow the PSCOC to authorize the PSFA to buy portables for temporary use by school districts; however, funding was not set aside for this purpose. Senator Nava noted the high cost of moving portables.

Dr. Everitt noted that school districts and legislators need to commit first to funding the master plan of the districts. Dr. Venegas suggested more coordination between the schools and community improvements.

Although Representative Larranaga recommended that the local districts should fund the "adds" to go above the adequacy standards, the school representatives noted this is hard to do (e.g., to break out those items) since it impacts the related "program needs" in the schools. There was additional concern from the schools that the increases in construction costs are tied to the time it takes to obtain funding.

School district representatives feel the capital outlay process takes too long and steps should be taken to shorten the process. Some expressed concern that the design-build process as set up under PSFA does not work well. Mr. Gorrell gave a brief summary of the process. Mr. Guardiola said the process with PSFA has helped tremendously, especially for small school districts. Senator Nava pointed out that awards have only been done twice under the current standards, and the entire process is still in the early stages. Mention was made of the Adequacy

Standards Advisory Group that has been working with PSFA and others to review and make recommendations for change, as needed, to the standards.

### **Approval of Minutes**

The task force unanimously adopted the minutes for the September meeting of the PSCOOTF.

The task force decided to work through the lunch hour.

### **Proposal to Revise Current PSFA Oversight and Review Responsibilities**

Ms. Santistevan offered a proposal to exempt from PSFA review certain types of school district projects. Currently, every new public or charter school campus and building as well as all additions, alterations and repairs to existing facilities go through a detailed review process, which involves review and approvals by several state agencies before any construction activities may begin. Reviews would still be required by other state agencies such as the Construction Industries Division of the Regulation and Licensing Department. It is estimated that about 30 percent of the projects currently being reviewed by PSFA would be eliminated from future review if the law is changed regarding the review process. This would free up staff for more critical assistance to the remaining school districts.

PSFA is asking the task force and the PSCOC to support the statutory change if the projects meet certain criteria, thus putting some routine projects on a fast track to completion. The projects proposed for exemption from PSFA review include:

- site grading and drainage improvements;
- playground equipment installation and repair;
- outdoor athletic playing surfaces (tennis and basketball courts, tracks, baseball fields, etc.) resurfacing and repairs;
- bus turnarounds, parent dropoffs and similar projects;
- parking lot resurfacing and repairs;
- window and door replacements;
- fences under six feet tall;
- shade structures;
- bleacher and canopy installations;
- sprinkler and irrigation system installations and repairs;
- interior and exterior lighting replacement;
- drop ceiling repair and replacement;
- low-voltage electrical items (intercom systems, etc.);
- permanent foundations for modular buildings; and
- sidewalks and other flat work not associated with larger projects.

This proposal was referred to PSCOOTF staff to determine if legislation is needed to implement the recommendations.

### **Cost Savings Realized by Designating Portable Classrooms as Temporary Facilities:**

**Proposal to Construction Industries Division**

Mr. McMurray requested that the PSCOOTF support redefinition of "temporary" with regard to portable facilities and the necessary infrastructure that must accompany portables. There are less expensive ways of providing the required footings, utility hookups, access ramps, etc., when those approaches are truly designed for temporary, rather than long-term, use. Given the current usage of portables, PSFA estimates a savings of \$6 million per year statewide if the proposed changes are implemented.

Mr. Mulcock moved that the PSCOOTF adopt the recommendation for this cost savings; the motion was unanimously adopted.

**PSCOC/PSFA: Other Issues and Priorities**

This presentation was canceled.

The next meeting of the Charter School Subcommittee will be November 7, 2006 at 9:00 a.m., and the work groups on the adequacy standards and the lease-purchase proposal from Verde Realty will be held on November 8, 2006.

Tentative dates for the December meeting are December 21 and December 22 in Santa Fe at the State Capitol.

There being no further business, the task force adjourned.